

# U.S. Sanctions on Burma: Issues for the 113<sup>th</sup> Congress

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## Summary

In March 2011, Burma's ruling military junta, the State Peace and Development Council (SPDC) formally dissolved itself and transferred power to a semi-military/semi-civilian government known as the Union Government, headed by President Thein Sein, ex-general and former prime minister for the SPDC. President Thein Sein, with the support of Burma's Union Parliament, has implemented a number of political and economic reforms, to which the Obama Administration has responded by waiving or easing sanctions.

Although the presidential waivers effectively lift the sanctions, they do not revoke or remove the sanctions, which can be reimposed at any time. Various recent developments in Burma have sparked a general reexamination of U.S. policy towards Burma, and a discussion of whether U.S. sanctions continue to be an effective means of achieving policy goals or effecting change in Burma. However, the continuation of serious human rights abuses has raised questions about the extent to which there has been significant political change in Burma, and if the easing of sanctions has been warranted.

The United States is nearing the limits of steps it can take to ease Burma sanctions without Congress passing new legislation. Thus, President Obama may approach Congress about the selective repeal or removal of one or more of the current sanctions on Burma. The 113<sup>th</sup> Congress allowed some of the sanctions contained in the Burmese Freedom and Democracy Act of 2003 to expire on July 26, 2013, when it did not pass an annual renewal resolution. The 113<sup>th</sup> Congress may consider either the imposition of additional sanctions or the removal of the remaining sanctions on Burma, depending on the conduct of the Burmese government and other developments in the country.

The current U.S. sanctions on Burma were enacted, for the most part, due to what the U.S. government saw as a general disregard by the SPDC for the human rights and civil liberties of the people of Burma. Burma-specific sanctions began following the Burmese military's violent suppression of popular protests in 1988, and have continued through several subsequent periods in which Congress perceived major human rights violations in Burma. The result is a web of overlapping sanctions with differing restrictions, waiver provisions, expiration conditions, and reporting requirements.

Existing U.S. sanctions on Burma are based on various U.S. laws and presidential executive orders. They can be generally divided into several broad categories, such as visa bans, restrictions on financial services, prohibitions of Burmese imported goods, a ban on new investments in Burma, and constraints on U.S. assistance to Burma. This report provides a brief history of U.S. policy towards Burma and the development of U.S. sanctions, a topical summary of those sanctions, and an overview of actions taken to waive or ease those sanctions by the Obama Administration. The report concludes with a discussion of actions taken by the 112<sup>th</sup> Congress and options for the 113<sup>th</sup> Congress.

In addition to the targeted sanctions, Burma may be subject to certain sanctions specified in U.S. laws addressing various functional issues, such as the use of child soldiers, drug trafficking, human trafficking. In many cases, the type of assistance or relations restricted or prohibited by these provisions is also addressed under Burma-specific sanction laws. Finally, Congress has used appropriation legislation to restrict or prevent the use of designated funds in Burma. This report will be updated as conditions warrant.

## Contents

Overview of Sanctions .....	1
Recent U.S. Sanctions Policy .....	3
Brief History of U.S. Sanctions on Burma .....	5
Summary of Burma-Specific Sanctions .....	9
Visa Bans.....	10
Restrictions on Financial Services .....	14
“Frozen Assets” .....	19
General Import Restrictions .....	24
Specific Import Restrictions.....	28
Investment Ban.....	30
Bilateral and Multilateral Assistance Ban .....	32
Additional Sanctions Based on Functional Issues .....	36
Options for the 113 <sup>th</sup> Congress .....	39
Burma and the 112 <sup>th</sup> Congress.....	40
Issues for the 113 <sup>th</sup> Congress.....	40
Sanction Renewal .....	41
Sanction Removal .....	41
Appropriations .....	42
General Policy Oversight.....	42

## Tables

Table 1. Summary of Status of U.S. Sanctions on Burma.....	5
Table 2. Visa Bans .....	11
Table 3. Restrictions on Financial Services.....	16
Table 4. “Frozen Assets” .....	20
Table 5. General Import Restrictions.....	25
Table 6. Specific Import Restrictions .....	28
Table 7. Investment Ban .....	31
Table 8. Bilateral and Multilateral Assistance Ban.....	34

## Contacts

Author Information.....	43
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## Overview of Sanctions

The United States imposes sanctions on Burma through a variety of means, including certain laws and presidential executive orders (E.O.s) specifically targeting Burma, as well as laws that impose sanctions on countries for unacceptable behavior related to functional issues of importance to the U.S. government, such as nuclear proliferation or human trafficking. The Burma-specific laws and E.O.s were issued between 1990 and 2012, often in response to actions on the part of Burma's ruling military junta, the State Peace and Development Council (SPDC), that were considered sufficiently egregious to warrant the imposition of sanctions. In addition, several presidential determinations, memoranda, proclamations, and other documents have been issued that refine and/or alter the implementation of the sanctions. The result is a web of overlapping sanctions subject to differing restrictions, waiver provisions, expiration conditions, and reporting requirements.

### Defining "Sanction"

The term "sanction" has a number of different legal meanings, depending on the context and/or circumstances in which it is being used. "Sanction" can be used to describe tacit or explicit approval, but can also be used to describe disapproval. For international matters, the word often refers to measures taken by a nation or a group of nations to coerce another nation to comply with expected conduct or behavior. Sanctions may include diplomatic measures (e.g., severing diplomatic ties), economic measures (e.g., restricting trade), or military measures (e.g., the imposition of a "no fly zone").

For purposes of this report, "sanction" refers to any measure or action of a diplomatic, economic, or military nature taken by a nation (usually, the United States) or a group of nations to coerce Burma to comply with expected conduct or behavior.

U.S. sanctions targeted solely at Burma are specified in six federal laws, a series of presidential executive orders, and other presidential documents. The six laws are:

- **Section 138 of the Customs and Trade Act of 1990** (Section 138) (P.L. 101-382)—requires the President to impose "such economic sanctions upon Burma as the President determines to be appropriate," unless the President certifies certain conditions pertaining to human rights and counternarcotics have been met;
- **Section 307 of the Foreign Assistance Act of 1961** (Section 307) (P.L. 87-195), as amended by the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (P.L. 103-236)—withholds U.S. contributions to selected international organizations with programs in Burma;
- **Section 570 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997** (Section 570) (P.L. 104-208)<sup>1</sup>—imposes various specific sanctions on Burma, unless the President certifies that certain human rights and democracy standards have been met;
- **The Burmese Freedom and Democracy Act of 2003** (2003 BFDA) (P.L. 108-61)—requires the President to impose a ban on the import of products of Burma; freeze assets of certain Burmese officials; block U.S. support for loans from international financial institutions (IFIs); and allows the President to ban visas for certain Burmese officials;

<sup>1</sup> The Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 was merged into Title 1 of the Omnibus Consolidated Appropriations Act, 1997.

- **The Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008** (Tom Lantos Block Burmese JADE Act) (P.L. 110-286)—bans the direct and indirect import of products containing Burmese jadeite and rubies; expands the list of Burmese officials subjected to visa bans and financial sanctions; and allows for the placement of restrictions on use of correspondent accounts to provide services to Burmese officials; and
- **P.L. 112-192**—provides the President with the authority to waive U.S. opposition to assistance to Burma from IFIs, subject to certain conditions.

Six presidential executive orders (E.O.) have imposed sanctions on Burma. The six E.O.s are:

- **E.O. 13047**—Issued on May 20, 1997, by President Bill Clinton, it bans all new investments in Burma, as required by Section 570;
- **E.O. 13310**—Issued on July 28, 2003, by President George W. Bush, it brings the sanction regime into compliance with certain provisions of the BFDA, including the freezing of assets of certain Burmese officials and the prohibition of the provision of financial services to Burma;
- **E.O. 13448**—Issued on October 18, 2007, by President Bush, it added to the list of Burmese officials and entities subject to the freezing of assets;
- **E.O. 13464**—Issued on April 30, 2008, by President Bush, it added to the list of Burmese officials and entities subject to the freezing of assets;
- **E.O. 13619**—Issued on July 11, 2012, by President Obama, it expanded the list of Burmese nationals subject to visa bans, the freezing of assets, and other targeted sanctions; and
- **E.O. 13651**—Issued on August 6, 2013, by President Obama, it prohibits the import of jadeite and rubies extracted from Burma, and articles of jewelry containing jadeite and rubies extracted from Burma; waives restrictions on the provision of financial services to certain Burmese nationals as specified in Section 5(b) of the Tom Lantos Block Burmese JADE Act; and lifts restrictions contained in E.O. 13310 on the provision of articles “intended to be used to relieve human suffering.”

Beyond the laws and E.O.s, a number of presidential determinations, memoranda, proclamations and other documents have been issued that either refine the specifics of the sanctions to be imposed or alter the scope of the sanctions in effect. For example, President Clinton issued **Presidential Proclamation 6925** on October 3, 1996, denying entry into the United States of “persons who formulate, implement, or benefit from policies that impede Burma’s transition to democracy, and the immediate family members of such persons.”<sup>2</sup> On May 2, 2013, Secretary of State John Kerry terminated Presidential Proclamation 6925, while leaving other laws and presidential decisions restricting the provision of visas to certain Burmese nationals in place.<sup>3</sup> Similarly, President Bush issued **Presidential Determination No. 2009-11** on January 15, 2009, providing a limited waiver of some of the sanctions in the Tom Lantos Block Burmese JADE Act,

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<sup>2</sup> Presidential Proclamation 6925, “Suspension of Entry as Immigrants and Nonimmigrants of Persons Who Formulate or Implement Policies that are Impeding the Transition to Democracy in Burma or Who Benefit from Such Policies,” 61 *Federal Register* 52233-52234, October 7, 1996.

<sup>3</sup> Office of the Spokesperson, Department of State, “Burma: Termination of Presidential Proclamation 6925,” press release, May 2, 2013. For more about visa bans, see “Visa Bans” below.

stating that doing so was “in the national interest of the United States.”<sup>4</sup> President Obama issued **Presidential Determination No. 2012-15** on September 14, 2012, waiving the restrictions on U.S. assistance to Burma under Foreign Relations Authorization Act, Fiscal Year 2003 (P.L. 107-228) by determining that doing so was in the “national interests of the United States.” References to the relevant presidential documents are discussed later in the report under the specific type of sanction affected or altered by the documents.

The E.O.s sanctioning Burma rely on the authority vested in the President by the Constitution, the five Burma sanctions laws, and the following laws:

- **The International Emergency Economic Powers Act of 1997, or IEEPA** (P.L. 95-223; 50 U.S.C. 1701 et seq.)—authorizes the President to impose certain types of international trade or financial sanctions to deal with a threat to national security, foreign policy, or economy of the United States; and
- **The National Emergencies Act, or NEA** (P.L. 94-412; 50 U.S.C. 1601 et seq.)—authorizes the President (under certain conditions) to declare a national emergency.

To carry out and execute the authority conveyed by the IEEPA, the President must declare a national emergency by invoking the NEA. Invocations of the IEEPA are subject to annual renewal requirements. Section 301 of U.S.C. Title 3, Chapter 35 allows the President to delegate authority (under certain conditions) to other government officials to carry out responsibilities on behalf of the President. In most cases, this has been either the Secretary of State or the Treasury Secretary. President Obama gave official notice to Congress on May 2, 2013, that he was continuing for another year the international emergency with respect to Burma, and renewing the provisions of E.O. 13047, E.O. 13310, E.O. 13448, E.O. 13464, and E.O. 13619 which are still in force.<sup>5</sup>

The implementation of the Burma-specific sanctions instituted by the preceding laws and E.O.s, and that have been delegated to the Treasury Secretary, is governed by Part 537 of Title 31 of the Code of Federal Regulations (CFR). These Burmese sanction regulations cover the import ban, the prohibition of the provision of financial services, and the prohibition of new investments in Burma. Other portions of the CFR cover some portions of Burmese-specific sanctions.<sup>6</sup>

## Recent U.S. Sanctions Policy

Current U.S. policy towards Burma can be characterized as the balancing of bilateral engagement and the maintenance of an assortment of political and economic sanctions.<sup>7</sup> The stated intent of U.S. policy is to persuade and/or pressure Burma’s Union Government to release all political prisoners from detention and advance the nation’s transition to a representative, democratically elected civilian government that will respect the human rights of the people of Burma, including

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<sup>4</sup> Executive Determination 2009-11, “Limited Waiver of Certain Sanctions Imposed by, and Delegation of Certain Authorities Pursuant to, the Tom Lantos Block Burmese JADE (Junta’s Anti-Democratic Efforts) Act of 2008,” 74 *Federal Register* 3957-3958, January 21, 2009.

<sup>5</sup> The President, “Continuation of the National Emergency with Respect to Burma,” 77 *Federal Register* 29851, May 18, 2012.

<sup>6</sup> For example, Part 447.52 of Title 27 regulates the arms embargo, while Part 41.21 of Title 21 regulates the visa ban on selected Burmese government officials, military officers, and their immediate family members.

<sup>7</sup> For a general discussion of U.S. policy towards Burma during the Obama Administration, see CRS Report R43035, *U.S. Policy Towards Burma: Issues for the 113th Congress*, by Michael F. Martin.

its ethnic minorities.<sup>8</sup> Since Burma's former ruling military junta, the State Peace and Development Council (SPDC), formally transferred power to a mixed military/civilian government in March 2011, Burma's Union Government and Union Parliament have implemented a number of political reforms that the Obama Administration sees as progress towards the fulfillment of U.S. objectives in Burma.

The Obama Administration's strategy was previously described as an "action for action" approach. In an April 4, 2012, press briefing, two unnamed senior Administration officials gave some indication of the current principles underlying current Burma policy. The first principle is "to send a clear signal of support for the reform process and reformers."<sup>9</sup> The second principle is to remove the "bluntness" of the existing sanctions and refocus them onto "the regressive elements, the corrupt elements, the elements that are not looking forward and consistent with reform going forward."<sup>10</sup>

However, an unnamed senior state department official provided a slightly different formulation for the Obama Administration's approach to U.S. policy towards Burma following the May 2013 announcement to terminate Presidential Proclamation 6925 and renew the IIEPA emergency:

[L]et me first say a few words about our Burma policy and our specific actions today. From our perspective, Burma continues to make important progress in areas of concern to the United States.... We'll continue political engagement and technical and capacity-building assistance to Burma's reform efforts. We've also eased many sanctions. We've done so working very closely with Congress to reflect our move from quite general broad restrictions to more calibrated engagement. And with the calibration, we target those who persist in hindering the country's democratic transition. But it's a fundamentally different approach to Burma than in past years. So the steps today acknowledged the important changes the Government of Burma has made, and encourage and empower the government and the people of Burma to continue on the path of political and economic reform.<sup>11</sup>

Since the autumn of 2011, the Obama Administration has taken steps to terminate or waive many of the sanctions on Burma in an effort to foster further reforms in Burma and support individuals identified as being generally supportive of political and economic reforms. Secretary Clinton announced plans to ease certain sanctions during her historic trip to Burma in late 2011, the first made by a U.S. Secretary of State since 1955. Another easing of sanctions was announced following Burma's April 2012 parliamentary by-elections. More relaxations of sanctions were announced to coincide with the visits of President Thein Sein and Aung San Suu Kyi to the United States in September 2012. Subsequent changes in the sanctions regime were made in October and November 2012. As previously mentioned, Secretary Kerry terminated the visa ban in Presidential Proclamation 6925 on May 2, 2013.

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<sup>8</sup> The Burmese government recognizes 135 distinct ethnic groups in the country. In addition, there are several ethnic groups, such as the Rohingyas, that are not recognized by the government. The ethnic groups are also referred to as "ethnic minorities" or "nationalities." This report will generally use the term, "ethnic groups."

<sup>9</sup> State Department, "Background Briefing on Burma," press release, April 4, 2012.

<sup>10</sup> Ibid.

<sup>11</sup> State Department, "Background Briefing on the Administration's Policies Toward Burma," press release, May 2, 2013.



**Table 1. Summary of Status of U.S. Sanctions on Burma**

Type of Sanction	Summary of Sanction	Date of Most Recent Action (if applicable)	Summary of Waiver or Termination
Visa Ban	Prohibition on issuing visas to selected Burmese officials	May 2, 2013	Terminated visa restrictions contained in Presidential Proclamation 6925.
Restrictions on Financial Services	Limitation on the export or reexport of financial services to Burma	August 6, 2013	Waives restrictions contained in Section 5(b)(2) of the Tom Lantos Block Burmese JADE Act.
"Frozen Assets"	Prohibition on the transfer or utilization of assets of selected Burmese officials held by U.S. financial institutions	August 6, 2013	Waives restrictions contained in Section 5(b)(1) of the Tom Lantos Block Burmese JADE Act.
General Import Ban	Ban on the import of products of Burmese origin	July 26, 2013	Congress does not pass resolution to renew ban on import of Burmese goods contained in Sections 3(a) and 3A of the Burmese Freedom and Democracy Act.
Specific Import Ban	Ban on the import of selected goods contain materials from Burma, and products made by certain Burmese companies	August 6, 2013	Prohibits importing jadeite and rubies extracted in Burma, and articles of jewelry containing jadeite and rubies extracted in Burma.
Investment Ban	Ban on new U.S. investments in Burma	July 11, 2012	Allows new U.S. investments in Burma.
Bilateral and Multilateral Assistance Ban	Limitations of the provision of certain types of assistance to Burma by the U.S. government and international financial institutions (IFIs)	September 14, 2012, and October 12, 2012	Allows certain U.S. assistance previously prohibited due to Burma's poor performance on illegal drug trafficking and production; Allows the United States to support IFI assistance to Burma.

**Source:** CRS analysis

**Notes:** For more details on each type of sanction, see relevant sections below.

A major element of the Obama's Administration's efforts to foster reforms in Burma has been the utilization of presidential authority to waive or terminate some of the existing political and economic sanctions on Burma. Although the presidential waivers effectively lift the sanctions, they do not revoke or remove the sanctions, which can be reimposed at any time. **Table 1** summarizes the sanction actions authorized to date, as well as which sanctions remain in effect. Details of each presidential waiver are discussed in the relevant sections below.

## Brief History of U.S. Sanctions on Burma

U.S. sanctions on Burma are the result of a general, but uneven decline in U.S. relations with Burma and its military, the Tatmadaw, after World War II and continuing until the establishment of the Union Government. For the most part, the decline was due to what the U.S. government saw as a general disregard by the Burmese military for the human rights and civil liberties of the people of Burma. However, part of the tensions between the Tatmadaw and the United States can be attributed to a failure to address Burma's internal security concerns in the early years after its independence.



During World War II, the United States utilized Burma as a base of operations against Japanese forces in China and Southeast Asia, engendering generally cordial relations with Burma's civilian and military leadership. Following the war, the former British colony of Burma became an independent nation, led by a civilian government. The new nation became a member of the United Nations in 1948, was a founding member of the General Agreement on Tariffs and Trade (GATT), and joined the International Monetary Fund (IMF) in 1952—with the full support of the United States. The United States and Burma also established full diplomatic relations.

Relations between the two nations began to sour following World War II for various reasons. First, Burma was increasingly frustrated by U.S. reluctance to resolve the status of displaced Kuomintang (KMT) soldiers operating out of northeastern Burma against the newly established People's Republic of China (PRC).<sup>12</sup> In 1953, U.S. economic assistance to Burma temporarily ceased in part because of the friction over these KMT soldiers. Second, Burma's civilian government proved to be unstable, due in part to various ethnic-based militia groups operating in the country, and in part due to a 1962 coup d'état staged by the military under the name of the Burmese Socialist Programme Party (BSPP). The new military government chose to foster closer ties to the PRC, a decision that the United States did not like. Third, the military government also demonstrated a general lack of respect for the human rights of its citizens, clamping down on opposition groups calling for a return to civilian rule.

Despite the cooling of relations, U.S. policy towards Burma remained relatively normal. The United States accepted Burma as one of the original beneficiaries of its Generalized System of Preference (GSP) program in 1976. It also granted Burma Most Favored Nation (MFN, now referred to as Normal Trade Relations, or NTR) status, and supported the provision of developmental assistance by international financial institutions. There were also close military-to-military relations (including a major International Military Education and Training [IMET] program) until 1988.

The implementing of sanctions on Burma did not begin until after the Tatmadaw brutally suppressed a peaceful, popular protest that has become known as the 8888 Uprising. Starting in the fall of 1987, popular protests against the military government sprang up throughout Burma, reaching a peak in August 1988. On August 8, 1988, the military quashed the protest, killing and injuring an unknown number of protesters. In the aftermath of the event, the military regrouped and the State Law and Order Restoration Council (SLORC) assumed power.

Three days following the crackdown, the Senate passed S.Res. 464, condemning the killings and mass arrests, supporting a return to democracy in Burma, and calling on the Reagan Administration to raise the issue of human rights and reconciliation with Burmese officials. On September 7, 1988, the House of Representatives passed H.Res. 529 condemning the killing of unarmed protesters, paying tribute to the people of Burma and their struggle for democracy, and calling on the executive branch to review assistance programs in Burma. The Reagan Administration responded on September 23, 1988, by suspending all U.S. aid to Burma, including counternarcotics programs, and stopping all arms sales—starting the gradual progress of sanctions on Burma. On April 13, 1989, President George H. W. Bush issued Presidential

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<sup>12</sup> When the KMT government collapsed in 1949, a group of about 12,000 KMT soldiers retreated into Burma and continued their military operations against the PRC and its army, the People's Liberation Army (PLA), causing problems in Burma's relationship with the PRC. Burma asked the United States to press its ally, the Republic of China, now located in Taiwan, to remove their troops from Burma. Although the United States did raise the issue with the Republic of China as early as 1950, the KMT troops remained in Burma until 1961, when they relocated into Thailand, but continued to move across the border into Burma.

Proclamation 5955, amending the Generalized System of Preferences (GSP) program and suspending preferential treatment.<sup>13</sup>

After assuming power, SLORC announced that it intended to expedite the return to civilian rule by holding parliamentary elections to form a Pyithu Hluttaw (Union Assembly) on May 27, 1990. On September 27, 1988, SLORC released a new law governing the registration of political parties, and on May 31, 1989, it issued a new law governing the upcoming parliamentary election.<sup>14</sup> Although 235 political parties registered for the election, only 4 parties won more than 10 of the 485 contested seats.<sup>15</sup> In a surprise to many, the National League for Democracy (NLD), led by Aung San Suu Kyi, received 59.9% of the valid votes and won 382 seats, while SLORC's political party, the National Unity Party, received 21.2% of the vote, but only 10 seats.

SLORC and Burma's military were shocked by the election results, and refused to allow the Union Assembly to meet. Instead, the Burmese military arrested and detained many of the opposition leaders, including Aung San Suu Kyi (who was under detention prior to the election). Protests, led by Buddhist monks and university students, were brutally suppressed. SLORC declared martial law.

Congress responded to the post-election crackdown by including Burmese sanction language in the Customs and Trade Act of 1990 (P.L. 101-382), which it passed on August 20, 1990. Section 138 of the law granted the President the authority to impose "such economic sanctions upon Burma as the President determines to be appropriate, including any sanctions appropriate under the Narcotics Control Trade Act of 1986." A version of the act which passed the Senate by a vote of 92-0 would have prohibited all imports from Burma.

As previously noted, President Bush had already suspended Burma's eligibility for the Generalized System of Preferences (GSP) program on April 13, 1989. President Bush also designated Burma as a drug-producing and/or drug-trafficking country under the Foreign Assistance Act of 1961 on February 28, 1990, which required the United States to oppose loans to Burma by international financial institutions.<sup>16</sup> After the passage of Customs and Trade Act of 1990, the Bush Administration invoked the law's authority on August 5, 1991, and refused to renew the Bilateral Textile Agreement with Burma, which had lapsed on December 31, 1990.<sup>17</sup>

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<sup>13</sup> George H.W. Bush, "Amending the Generalized System of Preferences," Presidential Proclamation 5955, April 13, 1989. The Office of the U.S. Trade Representative released a request for comments on its plan to initiate a review of the possible acceptance of Burma as a beneficiary developing country in the GSP program on April 16, 2013 (Office of the U.S. Trade Representative, "Generalized System of Preference (GSP): Initiation of a Review of the Union of Burma and the Lao People's Democratic Republic for Possible Designation as Beneficiary Developing Countries," 78 *Federal Register* 22593-5, April 16, 2013).

<sup>14</sup> There is some controversy over the intent of the election. According to Burma's 1974 constitution, the Union Assembly was the "highest organ of state power." In addition, SLORC repeatedly stated that the May 1990 election was to be a "multiparty democratic general election." As a result, many observers assumed that the newly elected Union Assembly would assume power. However, after the election, SLORC issued a statement on July 27, 1990, indicating that the purpose of the May 1990 election was to create a constitutional convention, and not the transfer of power to a civilian government.

<sup>15</sup> These were the National League for Democracy with 392 seats, the Shan Nationalities League for Democracy with 23 seats, the Arakan League for Democracy with 11 seats, and the National Unity Party with 10 seats. Of the 235 registered political parties, only 93 fielded candidates.

<sup>16</sup> "Presidential Determination No. 90-12—Memorandum on Narcotics Control Certification," Office of the President, February 28, 1990.

<sup>17</sup> The United States and Burma had a bilateral textile agreement covering selected articles of apparel from January 1, 1987, to December 31, 1990.

During the 1990s, Congress considered a number of bills and resolutions calling for additional sanctions on Burma. Most of those measures failed to emerge from committee, with a few notable exceptions. On April 30, 1994, Congress passed the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (P.L. 103-236) which amended the Foreign Assistance Act of 1961 and withheld a portion of U.S. contributions to international organizations with programs for Burma, including the United Nations Development Program (UNDP), but excluding the International Atomic Energy Agency (IAEA) and the United Nations Children's Fund (UNICEF). Language restricting U.S. funding for UNDP if it conducted programs in Burma was included in legislation up to FY2008, but not since then.<sup>18</sup>

In July 1995, the Free Burma Act of 1995 (S. 1092) was introduced, which would have placed a broad range of sanctions on Burma, including a ban on U.S. investment and assistance, the suspension of GSP privileges and normal trade relations, the prohibition of all imports of Burmese goods, travel restrictions to and from Burma, and U.S. opposition to all multilateral assistance. According to some scholars, the severity of the sanctions in this bill was sufficient to persuade SLORC to release Aung San Suu Kyi from house arrest on July 10, 1995.

Even after the release of Aung San Suu Kyi, Congress approved new sanctions on Burma in Section 570 of the Omnibus Consolidated Appropriations Act, 1997 (P.L. 104-208), including a cessation of all non-humanitarian assistance, a ban on the issuance of entry visas for Burmese government officials, and instructions for U.S. representatives for international financial institutions to vote against loans or funding to Burma. On October 3, 1996, President Clinton issued Presidential Proclamation 6925, suspending visas for "persons who formulate, implement, or benefit from policies that impede Burma's transition to democracy, and the immediate family members of such persons."<sup>19</sup> In addition, the law required the President to prohibit new investments in Burma by U.S. persons. On May 20, 1997, President Clinton released E.O. 13047 banning all new investments in Burma.

Since 2000, additional bills and resolutions have been introduced in Congress seeking to apply more sanctions on Burma. In October 2000, identical bills were introduced in the House and the Senate (H.R. 5603 and S. 3246; 106<sup>th</sup> Congress) that would have banned all textile and apparel imports from Burma. In the spring of 2001, similar bills (H.R. 2211 and S. 926; 107<sup>th</sup> Congress) were introduced that would have "prohibited the importation of any article that is produced, manufactured, or grown in Burma." However, Congress did not pass any new sanction legislation until after the spring 2003 crackdown on opposition parties (which included the detention of Aung San Suu Kyi and other opposition leaders), when it approved the Burmese Freedom and Democracy Act of 2003 (P.L. 108-61). Similarly, Congress did not pass the Tom Lantos Block Burmese JADE Act until the SPDC crushed a nationwide protest initiated by Buddhist monks in

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<sup>18</sup> Section 668(b) of the Consolidated Appropriations Act, 2008 (P.L. 110-161) stipulated:

Twenty percent of the funds appropriated by this act under the heading 'International Organizations and Programs' for a United States contribution to the United Nations Development Program (UNDP) shall be withheld from disbursement until the Secretary of State reports to the Committees on Appropriations that UNDP is—

- (1) giving adequate access to information to the Department of State regarding UNDP's programs and activities as requested, including in North Korea and Burma;
- (2) conducting oversight of UNDP programs and activities globally; and
- (3) implementing a whistleblower protection policy equivalent to that recommended by the United Nations Secretary General on December 3, 2007.

<sup>19</sup> Executive Order 6925, "Suspension of Entry as Immigrants and Nonimmigrants of Persons who Formulate or Implement Policies that are Impeding the Transition to Democracy in Burma or Who Benefit from Such Policies," 61 *Federal Register* 52233-52234, October 7, 1996.

the autumn of 2007—the so-called “Saffron Revolution.” After the protests had been quashed, the SPDC arrested and imprisoned many of the leaders, and defrocked and relocated a number of the Buddhist monks involved in the protests.

The George W. Bush Administration did not take significant action on Burma until after the attacks on the Burmese opposition in the spring of 2003 and the passage of the Burmese Freedom and Democracy Act of 2003 (BFDA). Using authority granted by the BFDA and other laws (see “Summary of Burma-Specific Sanctions”), President George W. Bush issued E.O. 13310, E.O. 13448, and E.O. 13464 on July 28, 2003, October 18, 2007, and April 30, 2008, respectively.

From the preceding overview, some distinct patterns emerge in the history of U.S. relations with Burma. First, despite the general decline in relations following World War II, the imposition of sanctions did not begin until after the suppression of the 8888 Uprising in 1988. Second, subsequent U.S. sanctions were generally imposed after Burma’s military had severely violated the human rights and civil liberties of its political opponents and/or the Burmese people. Third, Congress has been more proactive in pushing for the imposition of sanctions on Burma than the White House. Fourth, it is unclear if the imposition of sanctions had a demonstrable effect on the SPDC or its predecessors. Fifth, it is equally unclear if the absence of U.S. sanctions on Burma would have led to an improvement in the political situation in Burma.

## Summary of Burma-Specific Sanctions

The existing U.S. sanctions specifically targeted at Burma can be generally divided into several broad categories:

- Bans on issuing visas to certain past and present Burmese government officials (particularly the leadership of the State Peace and Development Council [SDPC] and the Union Solidarity Development Association [USDA]), members of their families, and their business associates.
- Restrictions on the provision of financial services to certain past and present Burmese government officials, members of their families, and their business associates.
- “Freezing” certain assets of selected individuals held by U.S. entities.
- A general prohibition on the import of goods of Burmese origin.
- A prohibition on the import of certain types of goods and goods from certain companies.
- A ban on new U.S. investments in Burma, including investments in third country companies.
- Restrictions on the provision of bilateral and multilateral assistance to Burma.

As previously mentioned, the enforcement of many of these sanctions have been waived, but the legal authority to impose the sanctions remain in effect and their enforcement could be resumed at any time.

Some of the types of sanctions are included in more than one of the laws or E.O.s listed above, with at times apparently overlapping provisions. In addition, depending on the specific provisions of the laws or E.O.s, the sanctions may be subject to differing presidential waiver provisions, renewal or extension conditions, or reporting requirements. A summary of the various provisions in the laws or E.O.s for each type of sanction follows in tabular form. In cases where the Obama

Administration has waived or eased a sanction, a brief description of what steps were taken, as well as possible ambiguities about the resulting situation, is provided.

## **Visa Bans**

Three laws include restrictions on the issuance of visas to certain Burmese nationals: Section 570 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997; the 2003 BFDA; and the Tom Lantos Block Burmese JADE Act. In addition E.O. 13619 and Presidential Proclamation 6925 also include restrictions on the issuance of visas. The nature and scope of the visa restrictions differ in each case.

On April 4, 2012, Secretary Clinton said that the Obama Administration was prepared to facilitate “travel to the United States for selected government officials and parliamentarians.”<sup>20</sup> In a subsequent press briefing, unnamed Administration officials indicated that the intent is to allow visits by “select reform-minded authorities.”<sup>21</sup> Existing sanctions laws—most notably Section 570 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 and the Tom Lantos Block Burmese JADE Act—authorize the President to waive restrictions on the issuance of visas to Burmese officials. In the case of the Tom Lantos Block Burmese JADE Act, the President is to determine and certify in writing to Congress that the waiver is in the national interest of the United States. Presumably, such a written notification to Congress is required for each case in which the President invokes the authority to waive the visa ban.

On July 11, 2012, President Obama released E.O. 13619, “Blocking Property of Persons Threatening the Peace, Security, or Stability of Burma.”<sup>22</sup> Section 5 of E.O. 13619 prohibits the entry into the United States as immigrants or nonimmigrants “aliens determined to meet one or more of the criteria in subsection 1(a) of the document.”

On May 2, 2013, Secretary of State John Kerry terminated Presidential Proclamation 6925 denying entry into the United States of “persons who formulate, implement, or benefit from policies that impede Burma’s transition to democracy, and the immediate family members of such persons.”<sup>23</sup>

The State Department presumably maintains a list of Burmese nationals that it has determined are subject to the visa bans contained in the three laws and E.O. 13619, but it has chosen not to make this list public. As a result, it is not known how many—if any—Burmese nationals have been added to the sanctions list under the provisions of E.O. 13619. Similarly, it is difficult to determine if the Obama Administration has properly notified the designated congressional committees on the occasions when visas have been granted to Burmese nationals who should have been subject to the visa sanction under the current sanction laws.

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<sup>20</sup> Secretary of State, “Recognizing and Supporting Burma’s Democratic Reforms,” press release, April 4, 2012.

<sup>21</sup> State Department, “Background Briefing on Burma,” press release, April 4, 2012.

<sup>22</sup> Executive Order 13619, “Blocking Property of Persons Threatening the Peace, Security, or Stability of Burma,” 77 *Federal Register* 41243-41245, July 13, 2012.

<sup>23</sup> Presidential Proclamation 6925, “Suspension of Entry as Immigrants and Nonimmigrants of Persons Who Formulate or Implement Policies that are Impeding the Transition to Democracy in Burma or Who Benefit from Such Policies,” 61 *Federal Register* 52233-52234, October 7, 1996.

**Table 2. Visa Bans**

	<b>Presidential Proclamation 6925</b>	<b>Section 570</b>	<b>2003 BFDA</b>	<b>Tom Lantos Block Burmese JADE Act</b>	<b>E.O. 13619</b>
<b>Main Provisions</b>	Suspends the entry into the United States as immigrants or nonimmigrants “persons who formulate, implement, or benefit from policies that impede Burma’s transition to democracy,” and the immediate family members of such persons	No entry visas for “any Burmese government official”	President is authorized to deny visas and entry to former and present leadership of the SPDC and the USDA	Certain categories of people are ineligible for U.S. visa: former and present leaders of the SPDC, USDA, or the Burmese military; officials of the SPDC, USDA, or Burmese military that are “involved in the repression of peaceful political activity or in other gross violations of human rights in Burma or in the commission of other human rights abuses ...”; persons providing substantial economic and political support for the SPDC, the USDA, or the Burmese military; and the immediate family members of any of the preceding people	Suspends the entry into the United States as immigrants or nonimmigrants aliens who: have engaged in acts that directly or indirectly threaten the peace, security, or stability of Burma; are responsible for or complicit in human rights abuses in Burma; have directly or indirectly been involved in arms trade between Burma and North Korea; are a senior official in an entity that has engaged in any of the preceding activities; have materially assisted the any of the preceding activities; or have acted on behalf of any person who has engaged in any of the preceding activities
<b>Conditions or Exceptions</b>	Does not apply to officials assigned to Burmese missions in the United States, and support staff and visitors who support the work of Burmese missions in the United States  Does not apply to persons whose entry is required by international agreements	As required by treaty obligations or to staff of Burmese mission in the United States	Secretary of State shall coordinate list of banned individuals on a biannual basis with representative of the European Union (EU)	Shall not be construed to conflict with visa eligibility provisions in P.L. 110-161 for ethnic groups in Burma who were forced to provide labor or support for Burmese military; Secretary of State may authorize exceptions to permit the operation of diplomatic missions, to conduct official government business in Burma, to permit U.S. citizens to visit Burma, and permit compliance with international agreements	None specified



	Presidential Proclamation 6925	Section 570	2003 BFDA	Tom Lantos Block Burmese JADE Act	E.O. 13619
<b>Waiver Provisions</b>	Permits the Department of State to waive the entry ban if “the entry of such person would not be contrary to the interests of the United States”	Temporary or permanent presidential waiver if sanctions are “contrary to the national security interests of the United States”	None specified	Presidential waiver allowed only if he determines and certifies in writing to Congress that it is “in the national interests of the United States”	None specified
<b>Termination, Duration, or Renewal Conditions</b>	May be repealed, in whole or in part, by Secretary of State, if “the Burmese regime has released NLD members currently being held for political offenses and other pro-democracy activists; enters into dialogue with the democratic opposition; or makes significant progress toward improving the human rights situation in the country;” <i>terminated by Secretary Kerry on May, 2, 2013</i>	“Until such time as the President determines and certifies to Congress that Burma has made measurable and substantial progress in improving human rights practices and implementing democratic government”	The President may terminate “upon request of a democratically elected government in Burma” and when conditions in Section (3)(a)(3)—progress on human rights, release of all political prisoners, freedom of speech and the press, freedom of association, peaceful exercise of religion, democratic governance, not designated as “a country of interest” for narcotics trafficking—have been met	Until the President determines and certifies “to the appropriate congressional committees” that the SPDC has released all political prisoners; entered into “a substantial dialogue with democratic forces led by the National League for Democracy and the ethnic minorities of Burma on transitioning to democratic government under the rule of law”; and allowed humanitarian access to people in areas of armed conflict in Burma	The Secretary of the Treasury, in consultation with the Secretary of State, is authorized to take such actions as may be necessary to carry out the purposes of the order



	<b>Presidential Proclamation 6925</b>	<b>Section 570</b>	<b>2003 BFDA</b>	<b>Tom Lantos Block Burmese JADE Act</b>	<b>E.O. 13619</b>
<b>Report or Publication Requirements</b>	None	Every six months after the enactment of the act, the President shall report to the chairmen of the Committee on Foreign Relations, the Committee on International Relations [Foreign Affairs] and the House and Senate Appropriations Committees on: progress towards democratization in Burma; progress on improving the quality of life of the Burmese people; and progress made in developing a multilateral strategy towards Burma	List of banned individuals to be posted on Department of State's web page <sup>a</sup>	No later than 120 days after enactment [November 26, 2008] the President shall transmit to the appropriate congressional committees a list of sanctioned officials; updated sanctioned officials lists shall be provided to the appropriate congressional committees "as new information becomes available"	None

- a. According to the State Department, this reporting requirement is no longer in effect. Also, the State Department asserts that visa application information is strictly confidential, making it illegal to post the list on its webpage.

## Restrictions on Financial Services

Restrictions on the provision of certain types of financial services to Burma from the United States or by a “United States person”<sup>24</sup> are in the Tom Lantos Block Burmese JADE Act, E.O. 13047, E.O. 13310, E.O. 13619, and E.O. 13651. The Tom Lantos Block Burmese JADE Act also allows the Secretary of the Treasury to place restrictions on the use of correspondent or payable-through accounts in U.S. financial institutions, but the Secretary has not exercised this option.

Section 5(b)(2) of the Tom Lantos Block Burmese JADE Act prohibits engaging in financial transactions with certain designated Burmese nationals. President Obama issued E.O. 13651 on August 6, 2013, which waived these restrictions on the provision of financial services in the Tom Lantos Block Burmese JADE Act. However, this waiver does not apply to persons included in the Department of Treasury’s List of Specially Designated Nationals and Blocked Persons.

On May 17, 2012, Secretary Clinton stated, “Today, I am announcing new steps to permit American investment in the country and the export of U.S. financial services—the most significant adjustments to our sanctions to date.”<sup>25</sup> She also said that the United States will “allow Burmese citizens access to international credit markets and dollar-based transactions.” On July 11, 2012, the Office of Foreign Assets Control (OFAC) of the Department of the Treasury issued General License No. 16, authorizing the exportation or reexportation of financial services to Burma, except “to any person whose property and interests in property are blocked pursuant to 31 C.F.R. §537.201(a), Executive Order 13448 ..., Executive Order 13464 ..., or Executive Order 13619....”

Section 2 of E.O. 13310 established the general prohibition on the export or reexport of financial services to Burma, subject to the restrictions on financial transaction sanctions contained in Section 203(b) of IEEPA.<sup>26</sup> Section 13 allows the continuation of financial transactions related to U.S. investments or agreements in Burma that pre-date the implementation of the new investment ban on May 21, 1997.

Given that these provisions of E.O. 13310 are based on IEEPA, the President has the authority to waive, amend, or terminate the general prohibition of the export or reexport of financial services to Burma. However, Section 1703 of IEEPA requires that the President report to Congress anytime he exercises IEEPA authority. The report to Congress must contain:

- the circumstances which necessitate such exercise of authority;
- an explanation of why the President believes those circumstances constitute an unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States;
- the authorities to be exercised and the actions to be taken in the exercise of those authorities to deal with those circumstances;
- a statement as to why the President believes such actions are necessary to deal with those circumstances; and

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<sup>24</sup> By the definitions included in both E.O.’s and the Tom Lantos Block Burmese JADE Act, a “United States person” includes a U.S. citizen, permanent resident alien, entity organized under U.S. law, or any person in the United States.

<sup>25</sup> Office of the Spokesperson, State Department, “Remarks of Secretary of State Hillary Rodham Clinton and Foreign Minister of Burma U Wunna Maung Lwin after their Meeting,” press release, May 17, 2012.

<sup>26</sup> Section 203(b) of IEEPA precludes the President using sanction authority to prohibit financial transactions “ordinarily incident to travel to or from any country.”

- identification of any foreign countries with respect to which such actions are to be taken and why such actions are to be taken with respect to those countries.

**Table 3. Restrictions on Financial Services**

	<b>E.O. 13047</b>	<b>E.O. 13310</b>	<b>Tom Lantos Block Burmese JADE Act</b>	<b>E.O. 13619</b>	<b>E.O. 13651</b>
<b>Main Provisions</b>	Prohibits the “approval or other facilitation by a United States person, wherever located, of a transaction by a foreign person where the transaction would constitute a new investment in Burma prohibited by this order if engaged in by a United States person or within the United States”; and “any transaction by a United States person or within the United States that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this order”	Prohibits the export or reexport, directly or indirectly, of financial services to Burma either from the United States or by a “United States person, wherever located”; and “approval, financing, facilitation, or guarantee by a United States person, wherever located, of a transaction by a foreign person where the transaction by that foreign person would be prohibited by this order if performed by a United States person or within the United States” (see “waiver provisions” below)	No United States person may engage in a financial transaction with the SPDC or with a person ineligible for a U.S. visa under the provisions of this act (see <b>Table 2</b> ); prohibited financial transactions include payments or transfers of property, transactions involving the transfer of anything of economic value; Secretary of the Treasury may prohibit or impose conditions on the opening or maintaining of a correspondent or payable-through account by any financial institution organized under U.S. law if the Secretary determines the account might be used by a foreign banking institution holding property for the SPDC or with a person ineligible for a U.S. visa under the provisions of this act or to conduct a transaction on their behalf	Prohibits the provision of funds, goods, or services by, to, or for the benefit of persons whose property and interest in property is blocked by the order	Waives the restrictions on the provision of financial services contained in Section 5(b) of the Tom Lantos Block Burmese JADE Act

	<b>E.O. 13047</b>	<b>E.O. 13310</b>	<b>Tom Lantos Block Burmese JADE Act</b>	<b>E.O. 13619</b>	<b>E.O. 13651</b>
<b>Conditions or Exceptions</b>	Provisions do not prohibit the entry into, performance of, or financing of a contract to sell or purchase goods, services, or technology, except new contracts for the development of resources in Burma providing payment for the supervision or guarantee of another person's performance, payment for shares, equity interest, royalties, earnings, and profits	Exceptions as provided in Section 203(b) of IEEPA (50 U.S.C. 1702(b)); revokes provisions in E.O. 13047 "to the extent that they are inconsistent with this order"	Exceptions for transactions authorized under E.O. 13047 and E.O. 13310; restrictions do not apply to contracts or other financial transactions for nongovernmental humanitarian organizations in Burma; Secretary of the Treasury may authorize exceptions to permit the operation of diplomatic missions, to conduct official government business in Burma, to permit U.S. citizens to visit Burma, and permit compliance with international agreements; Secretary of the Treasury must consult with Secretary of State, Attorney General, and the Chairman of the Federal Reserve's Board of Governors prior to invoking option to prohibit or impose conditions on correspondent or payable-through accounts	None specified	Waiver does not apply those persons included on the Department of Treasury's List of Specially Designated Nationals and Blocked Persons.
<b>Waiver Provisions</b>	None specified	None specified; <i>Waived on July 11, 2012, by the Department of Treasury by the issuance of General License No. 16.</i>	<i>Waived on August 6, 2013, by Section 8 of E.O. 13651</i>	None specified	None specified

	<b>E.O. 13047</b>	<b>E.O. 13310</b>	<b>Tom Lantos Block Burmese JADE Act</b>	<b>E.O. 13619</b>	<b>E.O. 13651</b>
<b>Termination, Duration, or Renewal Conditions</b>	None specified	None specified	Until the President determines and certifies “to the appropriate congressional committees” that the SPDC has released all political prisoners; entered into “a substantial dialogue with democratic forces led by the National League for Democracy and the ethnic minorities of Burma on transitioning to democratic government under the rule of law”; and allowed humanitarian access to people in areas of armed conflict in Burma	None specified	None specified
<b>Report or Publication Requirements</b>	None specified	None specified	No later than 120 days after enactment [November 26, 2008] the President shall transmit to the appropriate congressional committees a list of sanctioned officials; updated sanctioned officials lists shall be provided to the appropriate congressional committees “as new information becomes available”	None specified	None specified

## **“Frozen Assets”**

The “freezing” of assets of sanctioned Burmese officials is included in five executive orders—E.O. 13310, E.O. 13448, E.O. 13464, E.O. 13619, and E.O. 13651—as well as the 2003 BFDA and the Tom Lantos Block Burmese JADE Act. The first four executive orders broadened the list of Burmese persons and entities subjected to the asset freeze. Section 5(b)(1) of the Tom Lantos Block Burmese JADE Act directly tied the list of sanctioned persons to the visa ban list. The last executive order waived the freezing of assets as provided for by Section 5(b)(1) of the Tom Lantos Block Burmese JADE Act.



**Table 4. “Frozen Assets”**

	<b>2003 BFDA</b>	<b>E.O. 13310</b>	<b>E.O. 13448</b>	<b>E.O. 13464</b>	<b>Tom Lantos Block Burmese JADE Act</b>	<b>E.O. 13619</b>	<b>E.O. 13651</b>
<b>Main Provisions</b>	Requires U.S. financial institutions to freeze the funds and assets belonging to the SPDC, the senior officials of the SPDC or the USDA; requires the President to promulgate regulations no later than 60 days after enactment [September 26, 2003] for the enforcement of this act; U.S. financial institutions shall report frozen funds or assets to the Office of Foreign Assets Control (OFAC)	Blocks the transfer, payment, export, or withdrawal of all property and interests in property of sanctions persons if said property is in or comes into the United States, or the property is or comes within the possession or control of U.S. persons; sanctioned persons include persons listed in Annex of the order, or “any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, to be: a senior official of the SPDC, USDA, or a successor entity”; or “owned or controlled by, or acting or purporting to act for on the behalf of, directly or indirectly, any person whose	Blocks the transfer, payment, export, or withdrawal of all property and interests in property of sanctioned persons if said property is in or comes into the United States, or said property or interests in property are or come within the possession or control of U.S. persons; sanctioned persons include persons listed in Annex of the order, or “any person determined by the Secretary of the Treasury, in consultation with the Secretary of State,” to be a senior official of the SPDC, USDA, or a successor entity; “responsible for, or to have participated in, human rights abuses in Burma; engaged in, or have	Blocks the transfer, payment, export, or withdrawal of all property and interests in property of sanctioned persons if said property is in or comes into the United States, or said property or interests in property are or come within the possession or control of U.S. persons; sanctioned persons include persons listed in Annex of the order, or “any person determined by the Secretary of the Treasury, in consultation with the Secretary of State,” to be owned or controlled by, directly or indirectly, the Government of Burma, or	No property or interest in property of persons ineligible for a U.S. visa under the provisions of this act (see <b>Table 2</b> ) may be transferred, paid, exported, or withdrawn if the property is located in the United States; within the possession or control of a U.S. person (including overseas branch of a U.S. person); or the property comes into the possession or control of a U.S. person after the date of enactment of this act	No property or interest in property may be transferred, paid, exported, or withdrawn if the property is located in the United States to any person who, as determined by the Secretary of the Treasury to: have engaged in acts that directly or indirectly threaten the peace, security, and stability of Burma; be responsible for or complicit in the commission of human rights abuses in Burma; have directly or indirectly been involved in arms trade between Burma and North Korea; be a senior official of an entity that engaged in the preceding acts; have materially assisted, sponsored, or provided financial,	Waives the freezing of assets contained in Section 5(b) of the Tom Lantos Block Burmese JADE Act

		property and interests are blocked pursuant to this order”	engaged in activities facilitating public corruption by senior officials of the Government of Burma”; providing financial, material, logistical, or technical support for the Government of Burma, the SPDC, the USDA, or successor entities, or senior officials of the foregoing; acting on behalf of a sanctioned person; or spouse or dependent child of sanctioned person	official(s) of the Government of Burma; to have provided financial, material, logistical, or technical support for the Government of Burma, the SPDC, the USDA, or successor entities, or senior officials of the foregoing; acting on behalf of a person whose property is blocked by E.O. 13310, E.O. 13448, or E.O. 13464		material, or technological support of the preceding acts or persons whose property is blocked by this order; or be owned or controlled by, or have acted for or behalf of any person whose property is blocked by this order	
<b>Conditions or Exceptions</b>	Provides “additional authority” to the President to take action “as may be necessary to impose a sanctions regime to freeze such funds and assets”; allows the President to delegate the duties and authorities to Federal or other officials	Exceptions as provided under Section 203(b)(1), (3), and (4) of IEEPA; using authority under IEEPA, prohibits the donation of blocked property “intended to be used to relieve human suffering”	Government of Burma includes its agencies, instrumentalities, and controlled entities, and the Central Bank of Burma; using authority under IEEPA, prohibits the donation of blocked property “intended to be used to relieve human suffering”	Government of Burma includes its agencies, instrumentalities, and controlled entities, and the Central Bank of Burma; using authority under IEEPA, prohibits the donation of blocked property “intended to be used to relieve human suffering”	Restrictions do not apply to contracts or other financial transactions for nongovernmental humanitarian organizations in Burma; Secretary of the Treasury may authorize exceptions to permit the operation of diplomatic missions, to conduct official government business in Burma, to permit U.S. citizens to visit Burma, and permit compliance with	None specified	Waiver does not apply those persons included on the Department of Treasury’s List of Specially Designated Nationals and Blocked Persons

					international agreements		
<b>Waiver Provisions</b>	None specified	None specified	None specified	None specified	Presidential waiver allowed only if he determines and certifies to the appropriate congressional committees that it is “in the national interests of the United States”	None specified	None specified
<b>Termination, Duration, or Renewal Conditions</b>	President may terminate “upon request of a democratically elected government in Burma” and when conditions in Section (3)(a)(3)—progress on human rights, release of all political prisoners, freedom of speech and the press, freedom of association, peaceful exercise of religion, democratic governance, not designated as “a country of interest” for narcotics trafficking—have been met	None specified	None specified	None specified	Until the President determines and certifies “to the appropriate congressional committees that the SPDC has released all political prisoners; entered into “a substantial dialogue with democratic forces led by the National League for Democracy and the ethnic minorities of Burma on transitioning to democratic government under the rule of law”; and allowed humanitarian access to people in areas of armed conflict in Burma	None specified	None specified
<b>Report or Publication Requirements</b>	None specified	None specified	None specified	None specified	No later than 120 days after enactment [November 26, 2008] the President	None specified	None specified

shall transmit to the  
appropriate  
congressional  
committees a list of  
sanctioned officials;  
updated sanctioned  
officials lists shall be  
provided to the  
appropriate  
congressional  
committees “as new  
information  
becomes available”

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**Source:** CRS research.

## General Import Restrictions

Restrictions on the import of goods of Burmese origin in general are included in two laws—Section 138 of the Customs and Trade Act of 1990 and the 2003 BFDA—and one executive order, E.O. 13310. While the two laws ban the import of Burmese products, the executive order provides a waiver to comply with existing international obligations of the United States. On August 2, 2012, Congress passed H.R. 5986 (P.L. 112-163), extending the general import ban to July 25, 2013. Because the 113<sup>th</sup> Congress did not pass the required joint resolution to extend the general import ban in the 2003 BFDA, the sanctions specified in Sections 3(a)(1), 3(a)(2), and 3A of the 2003 BFDA expired on July 26, 2013.

On November 15, 2012, Deputy Secretary of State William J. Burns issued a determination that “it is in the national interest of the United States to waive the prohibitions described in Section 3(a) of the BFDA.”<sup>27</sup> Section 3(a) contains two distinct import bans—a general ban on “the importation of any article that is a product of Burma” (discussed in this section), and a “ban on imports from certain companies” (discussed in “Specific Import Restrictions” below). As indicated in the determination, Deputy Secretary Burns had the authority to issue the determination pursuant to Section 3(b) of the BFDA and Section 9 of E.O. 13310 (in which President Bush authorized the Secretary of State to exercise the presidential authority granted in Section 3(b) of the BFDA and redelegate that authority).<sup>28</sup>

Based on the State Department determination, the Office of Foreign Assets Control (OFAC) of the Department of the Treasury issued General License No. 18 on November 16, 2012, indicating the types of products on Burma that could be imported into the United States.<sup>29</sup> According to OFAC, any product of Burma may be imported into the United States except:

- Jadeite or rubies mined or extracted from Burma, or articles of jewelry containing jadeite or rubies mined or extracted from Burma, or any other activity prohibited by Section 3A of the BFDA, as amended by Section 6 of the Tom Lantos Block Burmese JADE Act; and
- Transactions, directly or indirectly, with any person whose property or interest in property are blocked by E.O. 13448, E.O. 13464, or E.O. 13619, as well as 31 C.F.R. §537.201(a).

The latter condition insures compliance with restrictions on payments to persons whose assets have been frozen or have otherwise been identified as being subject to sanctions (see “Frozen Assets” and “Restrictions on Financial Services”). OFAC removed General License No. 18 after the termination of the import sanctions in the 2003 BFDA and the issuance of E.O. 13651.

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<sup>27</sup> Department of State, “Determination under the Burmese Freedom and Democracy Act of 2003 concerning the Importation of Articles that are Products of Burma,” press release, November 15, 2012.

<sup>28</sup> Secretary Clinton issued Delegation of Authority 245-1 on February 13, 2009, delegating her authority as Secretary of State to the Deputy Secretary and the Deputy Secretary for Management and Resources (see Department of State, “Delegation from the Secretary to the Deputy Secretary and the Deputy Secretary for Management and Resources of Authorities of the Secretary of State,” 74 *Federal Register* 8835-8836, February 26, 2009).

<sup>29</sup> Department of the Treasury, Office of Foreign Assets Control, “General License No. 18,” Burmese Sanctions Regulations 31 C.F.R. Part 537, November 16, 2012).

**Table 5. General Import Restrictions**

	Section 138	2003 BFDA	E.O. 13310
<b>Main Provisions</b>	<p>“[T]he President shall impose such sanctions upon Burma as the President determines to be appropriate, including any sanctions appropriate under the Narcotics Control Act of 1986,” unless he certifies to Congress prior to October 1, 1990, that Burma has all the conditions listed in subsection (b) of the act; “the President shall give primary consideration to the imposition of sanctions on those products which constitute major imports from Burma, including fish, tropical lumber, and aquatic animals”</p>	<p>“[U]ntil such time as the President determines and certifies to Congress that Burma has met the conditions described in paragraph (3), beginning 30 days after the enactment of this Act, the President shall ban the importation of any article that is a product of Burma”</p>	<p>Waives the ban on the importation of products of Burma if the prohibition “would conflict with the international obligations of the United States under the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations, the United Nations Headquarters Agreement, and other legal instruments providing equivalent privileges and immunities”</p>
<b>Conditions or Exceptions</b>	<p>The President may decide not to impose sanctions if Burma has met the conditions in subsection (b): Burma meets the certification requirements of Section 802(b) of the Narcotics Control Act of 1986; national government legal authority in Burma has been transferred to a civilian government; martial law in Burma has been lifted; and all political prisoners have been released</p>	<p>Conditions of paragraph (3) are the SPDC has made “substantial and measurable progress” to end human rights violations; the Secretary of State reports to the appropriate congressional committees that “the SPDC no longer systematically violates workers rights;” the SPDC has made “substantial and measurable progress” to a democratic government, including the release of all political prisoners, allowing freedom of speech, the press, and association, permitting the peaceful exercise of religion, and concluding an agreement between the SPDC, the NLD, and Burma’s ethnic minorities to transfer power to a democratically elected civilian government; and Burma has not been designated as a country that “has failed demonstrably to make substantial efforts to adhere to its obligations under international counternarcotics agreements”</p>	<p>None specified</p>

Section 138		2003 BFDA	E.O. 13310
<b>Waiver Provisions</b>	None specified	The President may waive the import ban, in part or full, if he determines and notifies the Committees on Appropriations, Finance, and Foreign Relations of the Senate and the Committees on Appropriations, International Relations [Foreign Affairs], and Ways and Means of the House of Representatives that to do so is in the national interest of the United States; <i>Waived on the Department of State on November 15, 2012; the Department of the Treasury issued General License No. 18 on November 16, 2012</i>	None specified
<b>Termination, Duration, or Renewal Conditions</b>	None specified	The President may terminate “upon request of a democratically elected government in Burma” and when conditions in Section (3)(a)(3)—progress on human rights, release of all political prisoners, freedom of speech and the press, freedom of association, peaceful exercise of religion, democratic governance, not designated as “a country of interest” for narcotics trafficking—have been met; import bans contained in Section 3(a)(1) and Section 3A(b)(1) and 3A(c)(1) expire one year from the date of enactment or renewal unless Congress passes a resolution renewing the ban for a one-year period before the expiration of the ban; length of renewal limited to 12 years (as amended by P.L. 112-163); <i>Expired on July 26, 2013, after Congress did not pass the necessary renewal resolution</i>	Terminated by E.O. 13651



	Section 138	2003 BFDA	E.O. 13310
<b>Report or Publication Requirements</b>	If the President does not impose economic sanctions, he must report to Congress his reasons for not imposing sanctions, and the actions he is taking to see that the conditions in subsection (b) are being achieved; subsequent semiannual reports to Congress are required for two additional years, if no economic sanctions are imposed	No later than 90 days before the import restrictions are to expire, the Secretary of State, in consultation with the U.S. Trade Representative and “the heads of appropriate agencies,” shall submit to the Committees on Appropriations, Finance, and Foreign Relations of the Senate and the Committees on Appropriations, International Relations [Foreign Affairs], and Ways and Means of the House of Representatives a report on bilateral and multilateral efforts to promote human rights and democracy in Burma, the effectiveness of the trade sanctions on improving conditions in Burma and furthering U.S. policy objections towards Burma, and the impact of the trade sanctions on national security, economic, and foreign policy interests of the United States	None specified

**Source:** CRS research.

## Specific Import Restrictions

Both the 2003 BFDA and the Tom Lantos Block Burmese JADE Act contain specific import restrictions in addition to the general prohibition on the import of products described above. Section 3(a)(2) of the 2003 BFDA bans import of products and services from certain companies. The Tom Lantos Block Burmese JADE Act prohibits the importation of certain products by adding Section 3A to the 2003 BFDA.

On July 26, 2013, the specific import bans contained in Section 3(a)(2), as well as Section 3A of the BFDA (as amended by the Tom Lantos Block Burmese JADE Act) ceased to be in effect after Congress failed to pass the necessary joint resolution to maintain the sanctions. On August 6, 2013, President Obama issued E.O. 13651, reinstating the ban on the “importation into the United States of any jadeite or rubies mined or extracted from Burma and any articles of jewelry containing jadeite or rubies mined or extracted from Burma,” that had been imposed by Section 3A of the 2003 BFDA.<sup>30</sup>

On November 15, 2012, Deputy Secretary Burns issued a determination waiving the import restrictions in Section 3(a) of the BFDA, including Section 3(a)(2) that banned the import of Burmese goods from select entities (see **Table 6** below). General License No. 18, issued the following day by OFAC, indicated that the prohibition on transactions, directly or indirectly, with any person whose property or interest in property are blocked by E.O. 13448, E.O. 13464, or E.O. 13619, as well as 31 C.F.R. §537.201(a) remained in effect, thereby blocking the import of goods from these entities. OFAC, however, removed General License No. 18 after the termination of the import sanctions in the 2003 BFDA and the issuance of E.O. 13651. As a result, the restrictions on the importation of products from companies specified in Section 3(a)(2) of the 2003 BFDA are no longer in effect.

**Table 6. Specific Import Restrictions**

	<b>2003 BFDA</b>	<b>Tom Lantos Block Burmese JADE Act</b>	<b>E.O. 13651</b>
<b>Main Provisions</b>	Bans the import of products from the SPDC, any ministry of the SPDC, a member of the SPDC, an immediate family member of the SPDC; known narcotics traffickers from Burma or their immediate families; the Union of Myanmar Economics Holdings Incorporated (UMEHI) or any company in which the UMEHI has a fiduciary interest; the Myanmar Economic Corporation (MEC) or any company in which the MEC has a fiduciary interest, the USDA; or any successor entity for the SPDC, UMEHI, MEC, or USDA	Amends the 2003 BDFA to prohibit the import of “Burmese covered articles,” which includes jadeite mined or extracted in Burma; rubies mined or extracted in Burma; articles of jewelry containing jadeite or rubies mined or extracted in Burma starting 60 days after the enactment of the act [September 27, 2008]; establishes requirements for the import of “non-Burmese covered articles”	Prohibits the “importation into the United States of any jadeite or rubies mined or extracted from Burma and any articles of jewelry containing jadeite or rubies mined or extracted from Burma”

<sup>30</sup> Executive Order 13651, “Prohibiting Certain Imports of Burmese Jadeite and Rubies,” 78 *Federal Register* 48793-4, August 9, 2013.

	2003 BFDA	Tom Lantos Block Burmese JADE Act	E.O. 13651
<b>Conditions or Exceptions</b>	None specified	Excludes articles that were previously exported from the United States and then reimported into the United States by the same person without improvement in its value or condition while outside the United States; allows the import of non-Burmese covered articles for personal use; also see column on 2003 BFDA of <b>Table 5</b>	Exception for transactions that are required by international obligations under the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations, or other legal instruments providing equivalent privileges and immunities
<b>Waiver Provisions</b>	None specified; <i>Waived on the Department of State on November 15, 2012; the Department of the Treasury issued General License No. 18 on November 16, 2012</i>	See column on 2003 BFDA of <b>Table 5</b>	None specified
<b>Termination, Duration, or Renewal Conditions</b>	<i>Expired on July 26, 2013, after Congress did not pass the necessary renewal resolution</i>	Amends duration conditions of 2003 BFDA to include covered articles in 3A(b)(1) and Section 3A(c)(1) of the amended 2003 BFDA (see <b>Table 5</b> ); <i>Expired on July 26, 2013 after Congress did not pass the necessary renewal resolution</i>	None specified

	2003 BFDA	Tom Lantos Block Burmese JADE Act	E.O. 13651
<b>Report or Publication Requirements</b>	None specified	Not later than 180 days after enactment [January 25, 2009], the President shall transmit to the Committees on Foreign Affairs and Ways and Means of the House of Representatives, and the Committees on Finance and Foreign Relations in the Senate, actions taken during the 60 days after enactment of the act to obtain draft waiver decision from the World Trade Organization, an adoption of a U.N. General Assembly resolution, and the negotiation of an international identification system for covered articles like the Kimberley Process Certification Scheme for diamonds; not later than 14 months [September 29, 2009] after enactment, the U.S. Comptroller General shall submit to the Committees on Foreign Affairs and Ways and Means of the House of Representatives, and the Committees on Finance and Foreign Relations in the Senate, a report on the effectiveness of the implementation of these sanctions	None specified

**Source:** CRS research.

## Investment Ban

The ban on new investments in Burma is in Section 570 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997, and E.O. 13047, with the law providing the presidential authority and the E.O. exercising that authority. On May 2, 2013, President Obama issued an official notice renewing the national emergency with respect to Burma.<sup>31</sup>

On April 4, 2012, Secretary Clinton stated that the Obama Administration was considering easing the ban on new investments in Burma.<sup>32</sup> In a subsequent press briefing, two unnamed senior

<sup>31</sup> The President, "Continuation of the National Emergency with Respect to Burma," 77 Federal Register 29851, May 18, 2012.

<sup>32</sup> Secretary of State, "Recognizing and Supporting Burma's Democratic Reforms," press release, April 4, 2012

Administration officials indicated that no final decision had been made on the nature of the easing of the investment ban, but consideration was being given to select certain sectors such as agriculture, tourism, and potentially telecommunications as they are more likely to provide “the most benefit for the average Burmese.”<sup>33</sup> Other sectors, associated with “regressive elements [of] the Burmese economy and Burmese society” such as gems and timber, may not be opened to new investments at this time.<sup>34</sup> The financial services sector was also being considered.

On July 11, 2012, the Obama Administration issued several documents to waive the ban on new U.S. investments in Burma, subject to certain conditions on with whom the investment can be made.<sup>35</sup> General License No. 17, issued by the Office of Foreign Assets Control of the Department of the Treasury, explicitly prohibits U.S. investments with:

- Burma’s Ministry of Defense (including its Office of Procurement);
- Any state or non-state armed group;
- Any entity in which the Ministry of Defense or an armed group own 50% or more interest; or
- Any person whose property is blocked pursuant to 31 C.F.R. §537.201(a); E.O. 13448, E.O. 13464, or E.O. 13619.

Among the people covered by 31 C.F.R. §537.201(a); are persons determined by the U.S. Treasury to be “a senior official of the Government of Burma, the State Peace and Development Council of Burma, the Union Solidarity and Development Association of Burma, or any successor entity to any of the foregoing.”

**Table 7. Investment Ban**

	<b>Section 570</b>	<b>E.O. 13047</b>
<b>Main Provisions</b>	Authorizes and requires the President to prohibit new investments in Burma	Prohibits new investments in Burma
<b>Conditions or Exceptions</b>	Requires the President prohibit new investments in Burma if he “determines and certifies to Congress that, after the enactment of the Act, the Government of Burma has physically harmed, rearrested for political acts, or exiled Aung San Suu Kyi or has committed large-scale repression of or violence against the Democratic opposition”	“Except to the extent provided in regulations, orders, directives, or licenses that may be issued in conformity with section 570” of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1997 (P.L. 104-208)
<b>Waiver Provisions</b>	Temporary or permanent presidential waiver if sanctions are “contrary to the national security interests of the United States;” waived on July 11, 2012, subject to certain conditions	None specified

<sup>33</sup> State Department, “Background Briefing on Burma,” press release, April 4, 2012.

<sup>34</sup> Ibid.

<sup>35</sup> Via a presidential memorandum, President Obama delegated authority to waive the investment ban as granted by §570(e) of P.L. 104-208 to Secretary Clinton. That authority was then exercised by Deputy Secretary of State Thomas R. Nides, who reportedly notified Congress of the waiver decision. The waiver paved the way for OFAC to release General License No. 17.

	Section 570	E.O. 13047
<b>Termination, Duration, or Renewal Conditions</b>	None specified in law; declaration of national emergency with respect to Burma subject to annual renewal by President	None specified in law; declaration of national emergency with respect to Burma subject to annual renewal by President
<b>Report or Publication Requirements</b>	Every six months after the enactment of the act, the President shall report to the chairmen of the Committee on Foreign Relations, the Committee on International Relations [Foreign Affairs], and the House and Senate Appropriations Committees on progress towards democratization in Burma; progress on improving the quality of life of the Burmese people; and progress made in developing a multilateral strategy towards Burma	None specified

**Source:** CRS research.

## Bilateral and Multilateral Assistance Ban

Restrictions on bilateral assistance to Burma are in Section 570 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997; and Section 307 of the Foreign Assistance Act of 1961, which withholds U.S. funding for international organizations with programs in Burma, with some specific exceptions. Section 5 of the 2003 BFDA requires the U.S. executive director of each international financial institution (IFI) in which the United States participates to vote against the extension of any loan, financial or technical assistance to Burma. Although the United States lacks enough votes to block an IFI from providing loans or assistance to Burma, in practice, it is unlikely that any IFI will proceed if the United States opposes the aid.

The 112<sup>th</sup> Congress passed H.R. 6431 in September 2012, granting the President the authority to waive U.S. opposition to IFI assistance to Burma required under Section 5 of the 2003 BFDA if the President determines to do so is in the national interest of the United States. It also states that prior to the President making such a determination, the Secretary of State and the Secretary of the Treasury shall consult with “the appropriate congressional committees on assistance to be provided to Burma by an international financial institution, and the national interest served by such assistance.” The law defines the “appropriate congressional committees” to be “the Committees on Foreign Relations, Banking, Housing and Urban Affairs, and Appropriations of the Senate, and the Committees on Financial Services, Foreign Affairs, and Appropriations of the House of Representatives.” The term “assistance” includes loans, financial or technical assistance, or “any other use of funds.” The bill became P.L. 112-192 on October 5, 2012.

President Obama issued a memorandum on October 10, 2012, delegating the authority granted by P.L. 112-192 to Secretary Clinton, who then issued a determination stating that “it is in the national interest of the United States to support assistance for Burma.”<sup>36</sup> A memorandum of justification provided to Congress on October 12, 2012, states that IFI assistance for Burma “encourages Burma’s transition to democracy and economic reforms efforts,” and is thereby in the national interest of the United States.<sup>37</sup> The memorandum specifically mentions a World Bank

<sup>36</sup> Department of State, “Determination Related to United States Support for Assistance Provided by International Financial Institutions for Burma,” October 12, 2012.

<sup>37</sup> Department of State, “Memorandum of Justification,” October 12, 2012.

vote to be taken on October 30, 2012, to provide a grant of \$80 million for community-driven development in Burma. The World Bank approved the grant on November 1, 2012.

It is not clear if Secretary Clinton's determination was intended to permit U.S. support for any IFI assistance for Burma in the future, or was meant to apply solely to the pending World Bank grant. Section 2 of P.L. 112-192 requires that Secretary of State and the Secretary of the Treasury consult with "the appropriate congressional committees" prior to the making of the determination required by Section 1 on the nature of the assistance and "the national interests served by such assistance," which can be read as restricting the determination to specific assistance about which the congressional committees were consulted. The Departments of State and the Treasury did not respond to requests for a clarification of their understanding of the interpretation of the determination of October 12, 2012.

With regard to Secretary Clinton's announcement that the United States would support the UNDP establishing a "normal country program" in Burma, current sanction laws may preclude the United States contributing funds to the program. Section 307 of the FAA (22 U.S.C. 2227), "Withholding of United States proportionate share for certain programs of international organizations," states:

Notwithstanding any other provisions of law, none of the funds authorized to be appropriated by this part shall be available for the United States proportionate share for programs for *Burma* [emphasis added], North Korea, Syria, Iran, Cuba, or the Palestine Liberation Organization or for projects whose purpose is to provide benefits to the Palestine Liberation Organization or entities associated with it, or at the discretion of the President, Communist countries listed in section 2370(f) of this title.

In other words, Section 307 prohibits the use of U.S. funds contributed to the UNDP and other international organizations for programs for Burma. In practice, according to the State Department, for the past decade it has sent a letter to UNDP indicating that the United States may withhold a portion of its contributions if the UNDP funded new programs and activities in Burma.

Subsection (c) provides an exemption for the International Atomic Energy Agency (IAEA) and the United Nations Children's Fund (UNICEF). The FAA does not grant the President the authority to waive the funding restrictions in Section 307. As a result, the United States cannot financially support a "normal country program" of the UNDP in Burma without Congress passing legislation to permit such funding.

In addition, several past laws—including some appropriation laws—included language that either prohibited the use of U.S. contributions to UNDP for programs and activities in Burma or withheld a portion of U.S. contributions to UNDP until the President or the Secretary of State certified to Congress that the UNDP was in compliance with specific conditions on its programs and activities in Burma. Among the past laws that contained language tying U.S. contributions to UNDP to its programs and activities in Burma were:

- Section 431 of the Foreign Relations Authorization Act for Fiscal Years 1994 and 1995 (P.L. 103-236);
- Section 108(c) of the Consolidated Appropriations Act of 2000 (P.L. 106-113); and
- Section 6689b) of the Consolidated Appropriations Act of 2008 (P.L. 110-161).

However, the Consolidated Appropriations Act, 2012 (P.L. 112-74) does not contain language regarding the use of U.S. contributions to UNDP in Burma. It does, however, state in Section 7044(b)(1) that "The Secretary of the Treasury shall instruct the United States executive directors



of the appropriate international financial institutions to vote against any loan, agreement, or other financial support to Burma.”

**Table 8. Bilateral and Multilateral Assistance Ban**

	Section 307	Section 570	2003 BFDA	P.L. 112-192
<b>Main Provisions</b>	Withholds U.S. funding for international organizations with programs in Burma, except for the International Atomic Energy Agency (IAEA) or the United Nations Children’s Fund (UNICEF).	Ban on bilateral assistance to Burma other than humanitarian assistance; counter-narcotics or crop substitution assistance (if the Secretary of State certifies to the appropriate congressional committees that Burma is “fully cooperating” with U.S. counter-narcotics efforts, and the programs are consistent with U.S. human rights concerns in Burma, and serve U.S. national interest); and assistance promoting human rights and democratic values; Secretary of the Treasury shall instruct the U.S. executive director to each appropriate international financial institution “to vote against any loan or other utilization of funds of the respective bank to or for Burma”	Secretary of the Treasury shall instruct the U.S. executive director to each appropriate international financial institution in which the United States participates, to oppose, and vote against the extension by such institution of any loan or financial or technical assistance to Burma.	Grants the President the authority to waive the requirement that U.S. executive director to each appropriate international financial institution in which the United States participates, to oppose, and vote against the extension by such institution of any loan or financial or technical assistance to Burma, if the President determines it is in the national interest of the United States
<b>Conditions or Exceptions</b>	None specified	As required by treaty obligations or to staff of Burmese mission in the United States	None specified	Prior consultation by Secretaries of State and Treasury conduct with “appropriate congressional committees” on the nature of the assistance and the national interest served

	Section 307	Section 570	2003 BFDA	P.L. 112-192
<b>Waiver Provisions</b>	None specified	Temporary or permanent presidential waiver if sanctions are “contrary to the national security interests of the United States”	None specified (see P.L. 112-192); <i>Waived by determination of Secretary Clinton on October 12, 2012</i>	None specified
<b>Termination, Duration, or Renewal Conditions</b>	None specified	“Until such time as the President determines and certifies to Congress that Burma has made measurable and substantial progress in improving human rights practices and implementing democratic government”	The President may terminate “upon request of a democratically elected government in Burma” and when conditions in Section (3)(a)(3)—progress on human rights, release of all political prisoners, freedom of speech and the press, freedom of association, peaceful exercise of religion, democratic governance, not designated as “a country of interest” for narcotics trafficking—have been met	

	Section 307	Section 570	2003 BFDA	P.L. 112-192
<b>Report or Publication Requirements</b>	Annual review by the Secretary of State reported to the appropriate committees (House Committee on Foreign Affairs and Senate Committee on Foreign Relations) of the “budgets and accounts of all international organizations receiving payments of any funds authorized to be appropriated by this chapter” [Chapter 3—International Organizations and Programs], including the amounts expended for programs in Burma and U.S. contributions to the organizations	Every six months after the enactment of the act, the President shall report to the chairmen of the Committee on Foreign Relations, the Committee on International Relations [Foreign Affairs], and the House and Senate Appropriations Committees on progress towards democratization in Burma; progress on improving the quality of life of the Burmese people; and progress made in developing a multilateral strategy towards Burma	None specified	

**Source:** CRS research.

## Additional Sanctions Based on Functional Issues

In addition to the targeted sanctions, Burma is currently subject to a number of sanctions specified in U.S. laws based on various functional issues. In many cases, the type of assistance or relations restricted or prohibited by these provisions is also addressed under Burma-specific sanction laws. The functional issues include:

- **Child Soldiers:** Burma is prohibited from receiving certain types of foreign assistance under the provisions of the Child Soldiers Prevention Act of 2008 (Title IV of P.L. 110-457) because of its designation as a foreign government that hosts governmental armed forces or supports armed groups that recruit and use child soldiers.<sup>38</sup> As a result, Burma is ineligible to receive aid under International Military Education and Training (IMET), Foreign Military Financing (FMF), and

<sup>38</sup> Child soldiers are statutorily defined in Section 402 of the Child Soldiers Prevention Act of 2008 as “(i) any person under 18 years of age who has taken direct part in hostilities as a member of governmental armed forces; (ii) any person under 18 years of age who has been compulsorily recruited into governmental armed forces; (iii) any person under 15 years of age who has been voluntarily recruited into governmental armed forces; and (iv) any person under 18 years of age who has been recruited or used in hostilities by armed forces distinct from the armed forces of a state.” The definition includes any of the above serving in “any capacity, including in a support role as a cook, porter, messenger, medic, guard, or sex slave.”

Section 1206 assistance, as well as excess defense articles and the issuance of licenses for direct commercial sales of military equipment.<sup>39</sup>

- **Human Trafficking:** Burma had been prohibited from receiving non-humanitarian and non-trade-related foreign assistance because of its designation by the President as a “Tier 3” country in the 2012 Trafficking in Persons (TIP) Report. In the 2013 TIP report, Burma was elevated to the Tier 2 Watch List, ending the restrictions on non-humanitarian and non-trade-related foreign assistance. However, under the provisions of the Victims of Trafficking and Violence Protection Act of 2000 (TVPA, P.L. 106-386, as amended), countries that remain on the Tier 2 Watch List for two consecutive years are automatically redesignated as Tier 3 nations and subject to the assistance restrictions.<sup>40</sup>
- **Illicit Drug Transit or Drug Production:** Section 706 of the Foreign Relations Authorization Act, Fiscal Year 2003 (FRAA) (P.L. 107-228) requires the President provide to designated congressional committees a report by September 15 each year listing countries that the President has determined to be major drug transit and/or major illicit drug producing countries as defined in Section 481(e) of the Foreign Assistance Act of 1961 (P.L. 87-195). On September 13, 2013, President Obama issued Presidential Determination 2013-14, identifying Burma as a major drug transit and/or major illicit drug producing country.<sup>41</sup> Designation as a major drug transit and/or major illicit drug producing country may result in a reduction in bilateral assistance and U.S. opposition to IFI assistance. However, in the same document, President Obama determines that providing assistance to Burma “is vital to the national interest of the United States,” thereby waiving the restriction on assistance to Burma. An accompanying memorandum of justification states that a waiver was warranted because of the Burmese government’s “demonstrated commitment to reform, and promising sign on future poppy eradication.”<sup>42</sup>
- **Money Laundering and Organized Crime:** In 2004, Burma’s Mayflower Bank and Asia Wealth Bank, and the jurisdiction of Burma as a whole, including its state-run banks, were designated as “primary money laundering jurisdictions of concern” under Section 311 of the USA PATRIOT Act (P.L. 107-56, as amended) for the country’s absence of money laundering regulations, weak oversight of the banking sector, and private bank connections to account holders involved in organized crime, particularly drug trafficking. Under this provision, the Treasury Department imposed a “special measure” to prohibit certain U.S. financial institutions from establishing, maintaining, administering, or managing correspondent or payable-through accounts for, or on behalf of, Myanmar Mayflower Bank, Asia Wealth Bank, and any other Burmese banking institution.

<sup>39</sup> The list of countries subject to sanction under the Child Soldiers Prevention Act of 2008 is required to be published in the State Department’s annual TIP report. The first list under this provision was published in the June 2010 edition of the TIP report. On October 4, 2011, President Obama issued Presidential Determination No. 2012-1 granting a waiver for the Democratic Republic of the Congo and Yemen – but not for Burma.

<sup>40</sup> For more about the TVPA and restrictions on assistance, see CRS Report R42497, *Trafficking in Persons: International Dimensions and Foreign Policy Issues for Congress*, by Liana Sun Wyler.

<sup>41</sup> The White House, “Presidential Determination on Major Illicit Drug Transit or Major Illicit Drug Producing Countries for Fiscal Year 2014,” Presidential Determination No. 2013-14, September 13, 2013.

<sup>42</sup> The White House, “Memorandum of Justification for Major Drug Transit or Illicit Drug Producing Countries for FY 2014,” September 13, 2013.

This prohibition extends to correspondent or payable-through accounts maintained for other foreign banks when such accounts are used to provide banking services to Burmese banks indirectly.<sup>43</sup> The Department of the Treasury repealed the special measures against Myanmar Mayflower Bank and Asia Wealth Bank effective October 1, 2012.<sup>44</sup>

- **Religious Freedom:** The International Religious Freedom Act (IRFA, P.L. 105-292, as amended) requires that the President conduct an annual review of the status of religious freedom in other nations, and authorizes the imposition of various types of sanctions on nations that seriously violate religious freedom.<sup>45</sup> Burma has been designated a “country of particular concern for religious freedom” pursuant to this act since 1999.<sup>46</sup> As the sanctioning action imposed on Burma pursuant to IRFA and currently in effect, the Secretary of State has elected to continue the existing arms embargo against Burma.<sup>47</sup>
- **Workers’ Rights:** The Trade Reform Act of 1974 (P.L. 93-618, as amended) grants the President the authority to withdraw preferential trade treatment under the U.S. generalized system of preferences (GSP) program if a country “has not taken or is not taking steps to afford internationally recognized worker rights to workers in the country.” On April 13, 1989, President George H. W. Bush issued Presidential Proclamation 5955 suspending Burma’s preferential treatment under the GSP program, invoking his authority under the Trade Reform Act of 1974. On April 15, 2013, the Office of the U.S. Trade Representative issued a notice in the Federal Register indicating that it was undertaking a review of the Union of Burma’s eligibility for the GSP program.<sup>48</sup>
- **World Peace and the Security and Foreign Policy of the United States:** The President has the authority under the Arms Export Control Act of 1976 (P.L. 94-

<sup>43</sup> In the *Federal Register* notice regarding the application of Section 311 Special Measures on Burma, the Treasury Department provides the following explanation regarding how this sanction will differ from those already imposed on Burma: “The imposition of Section 311 special measures reinforces the existing restrictions on transactions with Burma that are outlined above. Although they are similar in their effect, the Section 311 special measures differ in certain respects and serve distinct policy goals. First, the Section 311 special measures are potentially broader than the existing sanctions in at least one respect—they apply to all foreign branches of Burmese banking institutions. Second, the purposes served by the Section 311 action differ markedly from the purposes of the economic sanctions described above. This action under Section 311 is premised on the Secretary’s determination that Burma poses an unacceptable risk of money laundering and other financial crimes, due to its failure to implement an effective anti-money laundering regime. The goals of this action include protecting the U.S. financial system and encouraging Burma to make the necessary changes to its anti-money laundering regime. The existing sanctions pursuant to Executive Order 13310, on the other hand, were imposed for different reasons, in particular to take additional steps with respect to the government of Burma’s continued repression of the democratic opposition.” See U.S. Department of Treasury, “Imposition of Special Measures Against Burma: Final Rule,” *Federal Register*, Vol. 69, No. 70, April 12, 2004, p. 19093.

<sup>44</sup> Department of the Treasury, “Repeal of the Final Rule Imposing Special Measures and Withdrawal of the Findings of Primary Money Laundering Concern Against Myanmar Mayflower Bank and Asia Wealth Bank,” *Federal Register*, Vol. 77, No. 190, October 1, 2012, pp. 59747-59478.

<sup>45</sup> These functions were delegated to the Secretary of State in “Delegation of Responsibilities Under the International Religious Freedom Act of 1998,” *Federal Register*, Vol. 64, No. 168, August 31, 1999.

<sup>46</sup> “Designation of Countries of Particular Concern Under The International Religious Freedom Act,” *Federal Register*, Vol. 64, No. 212, November 3, 1999.

<sup>47</sup> The existing arms embargo is referenced in 22 CFR 126.1(a).

<sup>48</sup> U.S. Trade Representative, “Generalized System of Preferences (GSP): Initiation of a Review of the Union of Burma and Lao People’s Democratic Republic for Possible Designation as Beneficiary Developing Countries,” 78 *Federal Register* 22593-5, April 16, 2013.

329) to prohibit all arms exports to a country “in furtherance of world peace and the security and foreign policy of the United States.” On September 23, 1988, President Reagan invoked his powers under this law to impose an arms embargo on Burma. In addition, on June 9, 1993, the State Department issued a public notice implementing an immediate ban on export of defense articles and services to Burma.<sup>49</sup> The U.S. arms embargo on Burma remains in effect.

## Options for the 113<sup>th</sup> Congress

Various recent developments in Burma have sparked a general reexamination of U.S. policy towards Burma, and a discussion of whether U.S. sanctions continue to be an effective means of achieving policy goals or effecting change in Burma. After Senior General Than Shwe formally dissolved the SPDC on March 30, 2011, and officially transferred power to the new Union Government, an era of political reforms and improved communications with the United States has ensued. Since taking office, President Thein Sein has issued prisoner amnesties on 11 occasions, resulting in the release of 29,545 prisoners, including 946 political prisoners.<sup>50</sup> The Union Parliament has enacted laws that allowed the NLD and other opposition parties to participate in parliamentary by-elections in April 2012,<sup>51</sup> and permit the formation of labor unions. In addition, the Union Government has begun ceasefire talks with several of the nation’s ethnic-based militias, concluding preliminary agreements in some cases.

Over the last two years, the Obama Administration has fostered closer ties with the Burmese government and eased restrictions on political and economic relations in the hopes that such actions will foster changes in Burma consistent with U.S. policy towards that nation. In most cases, these actions have been taken using existing presidential authority provided by the Constitution and existing laws, including Burmese sanctions laws—an approach that was generally acceptable to both the White House and Congress.

The Obama Administration, however, is nearing the limits of steps it can take without Congress passing new legislation. The White House has waived existing sanctions for most of the situations in which current law provides for such presidential authority, so additional easing of restrictions on political and economic relations with Burma would likely require Congress to pass new laws. In addition, maintaining the current status in bilateral relations would also take congressional action as certain provisions in the sanctions laws are subject to annual renewal by Congress and the appointment of a Special Representative and Policy Coordinator for Burma is subject to Senate approval. It is unknown if and when the White House may approach Congress about the possible removal or amending of remaining sanctions on Burma.

Serious human rights violations continue to occur in Burma. According to Assistance Association for Political Prisoners (Burma), over 180 political prisoners remain in detention.<sup>52</sup> The government-backed Union Election Commission refuses to register several ethnic-based political parties. Some labor unions have been unable to register and union organizers have been subjected to harassment and arbitrary dismissal, despite the passage of the new law. Although President

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<sup>49</sup> Department of State, “Suspension of Munitions Export Licenses to Burma,” 58 *Federal Register* 33293, June 16, 1993.

<sup>50</sup> For more about the release of political prisoners in Burma, see CRS Report R42363, *Burma’s Political Prisoners and U.S. Sanctions*, by Michael F. Martin.

<sup>51</sup> For more information on the by-elections, see CRS Report R42438, *Burma’s April Parliamentary By-Elections*, by Michael F. Martin.

<sup>52</sup> As of May 11, 2013. Complete list of Burma’s political prisoners is posted on the AAPP(B)’s webpage: <http://www.aappb.org>.

Thein Sein issued instructions to stop all attacks on ethnic-based militias, the Tatmadaw continues its assaults and commits severe human rights abuses against civilians in conflict areas.

## **Burma and the 112<sup>th</sup> Congress**

The 112<sup>th</sup> Congress acted several times to retain or reaffirm the existing sanctions on Burma. In its first session, it passed H.R. 2017 (P.L. 112-33) on September 30, 2011, extending the import restrictions in Section 3 of the 2003 BDFA through July 2012. It subsequently renewed the general import restrictions for a second time on October 5, 2011, when it passed H.R. 2608 (P.L. 112-36). The Consolidated Appropriations Act, 2012 (P.L. 112-74), passed on December 15, 2011, reaffirmed other existing sanctions by barring the use of funds for international military education and training, foreign military financing, excess defense articles, or Section 1206 assistance;<sup>53</sup> restricting the use of the State Department's Economic Support Fund to humanitarian assistance in Burma; and restating the requirement that the U.S. executive directors to IFIs vote against "any loan, agreement, or other financial support to Burma." In its second session, the 112<sup>th</sup> Congress passed P.L. 112-163 extending the import restrictions in Section 3 of the 2003 BDFA through July 2013, and P.L. 112-192, described previously in the report. In general, the 112<sup>th</sup> Congress allowed the Obama Administration to take the lead on deciding when to selectively ease or waive some of the existing sanctions (see "Recent U.S. Sanctions Policy").

The relative dearth of legislative action does not imply that the 112<sup>th</sup> Congress did not demonstrate an interest in U.S. policy in Burma. The House Committee on Foreign Affairs Subcommittee on Asia and the Pacific held oversight hearings in June 2011 and April 2012 on U.S. policy in Burma.<sup>54</sup> The Senate Committee on Foreign Relations held nomination hearings for Ambassador Mitchell in June 2011 for the position as Special Representative and Policy Coordinator for Burma and in June 2012 for the position of ambassador to Burma, plus a policy oversight hearing in April 2012.<sup>55</sup> Several congressional delegations from both the House of Representatives and the Senate traveled to Burma to assess the extent of the political reforms and discuss U.S. policy with various political leaders. During the 112<sup>th</sup> Congress, the Obama Administration frequently consulted with key Members of Congress regarding possible policy options, as well as to inform Congress of the Administration's interpretation of the situation in Burma. Several Members of Congress also released statements on Burma, ranging from support for the removal of all sanctions to disapproval of "pragmatic engagement" and the endorsement of the maintenance of all sanctions.

## **Issues for the 113<sup>th</sup> Congress**

The 113<sup>th</sup> Congress may be asked by the Administration either to waive or extend waivers for existing sanctions, or to take legislative action to fully remove sanctions. It will also play a role in U.S. policy towards Burma when it considers appropriating funds for various assistance programs in the country. Possibly the largest and most noteworthy will be consideration of funds for the newly established U.S. Agency for International Development (USAID) mission located in the U.S. embassy in Rangoon, Burma. However, funding for other forms of assistance programs—

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<sup>53</sup> Section 1206 of the National Defense Authorization Act (NDAA) for Fiscal Year 2006, as amended and regularly extended, provides the Secretary of Defense with authority to train and equip foreign military forces for two specified purposes—counterterrorism and stability operations—and foreign maritime security forces for counterterrorism operations.

<sup>54</sup> Details of the House hearings are available online at <http://foreignaffairs.house.gov/hearings/>.

<sup>55</sup> Details of the Senate hearings are available online at <http://www.foreign.senate.gov/hearings/>.



including some previously prohibited by sanction laws, but not possible due to presidential waivers—would also face congressional consideration.

The 113<sup>th</sup> Congress has the option of continuing to monitor and oversee the administration of existing laws establishing U.S. policy towards Burma, as well as the general conduct of U.S. policy. Certain aspects of current enforcement may not be fully within the spirit or the letter of the existing laws, particularly with respect to visa bans, assets freezes, and restrictions on the provision of financial services. In addition, recent discussions about closer military-to-military relations have raised concerns about the limits on such interactions. While the 112<sup>th</sup> Congress held hearings on U.S. policy towards Burma in general, the 113<sup>th</sup> Congress may consider hearings targeted at specific aspects of U.S. policy and/or critical issues in the dynamic situation in Burma.

### **Sanction Renewal**

Section 9(b) of the BFDA requires Congress annually to renew the general import ban contained in Section 3(a)(1), 3(a)(2) and 3A. Congress had done so regularly since the BFDA went into effect on July 28, 2003, with the most recent renewal occurring on August 2, 2012, when Congress passed H.R. 5986 (P.L. 112-163), extending the BFDA's import ban to July 25, 2013. The 113<sup>th</sup> Congress, however, did not take up the renewal resolution before the sanctions expiration, effectively terminating the sanctions.

The Obama Administration waived the general import ban contained in Section 3(a)(1) of the BFDA on November 15, 2012 (see “General Import Restrictions” above), but reinstated the trade restrictions in Section 3A by issuing E.O. 13651. Prior to the 2012 congressional passage of renewal resolution, the State Department indicated its support for the extension of the general import ban for another year. It is unclear if the Obama Administration would support or oppose the passage of a renewal resolution given the issuance of E.O. 13651.

### **Sanction Removal**

Although presidential waivers permit the temporary suspension of sanctions, the actual removal of existing sanctions may be a more complex proposition because of the overlapping provisions of the laws governing the current sanction regime. In addition, because Burma is subject to sanctions based on assessments related to certain functional issues (e.g., human trafficking, religious freedoms), the repeal of Burma-specific sanction laws or E.O.s may not eliminate certain types of restrictions on Burma. In addition, Congress would likely give consideration to matching the importance or weight of the sanction to the intended message it would be trying to convey to the Burmese government and the people of Burma. Such a balance would also heavily depend on the course of events in Burma in the months ahead.

Congress can select among several alternative approaches to remove sanctions on Burma, if it decides such actions are warranted. One approach would be to pass legislation superseding the existing laws. Such legislation would require cautious wording to avoid unintentionally revoking sanctions other than those targeted in the bill. An alternative would be to amend or repeal relative sections of the existing laws to remove the corresponding sanctions. Bills of this sort would also require special attention to insure that all relevant provisions are included without unintentional consequences. Congress could also provide the President with the authority to remove or revoke the sanction, possibly subject to certain conditions being met in Burma. Existing sanction laws already grant the President such authority for certain sanctions.



## Appropriations

As part of the easing of sanctions on Burma, the Obama Administration has periodically announced its intention to provide various forms of assistance to Burma, including the reopening of a USAID mission there.<sup>56</sup> While the various presidential waivers described above have provided the legal basis for the provision of such assistance, it remains for Congress to consider the appropriation of funds to finance the specific forms of assistance the White House would like to provide to Burma.

Congressional appropriations for assistance programs for Burma have been around \$38 million per year since FY2010, with most of the amount allocated through the State Department's Economic Support Fund (ESF). Under the President's proposed budget for FY2013, the overall amount is to remain relatively unchanged, but about \$6 million is to be shifted from humanitarian assistance to health programs. Support for civil society and education projects—which have traditionally gone to programs outside Burma, mostly in Thailand—are to be reduced by about \$1 million each, according to the President's proposal.

The 113<sup>th</sup> Congress has utilized appropriation legislation to restrict funding to Burma for fiscal year 2013. Section 8115 of P.L. 113-6 prohibits the use of appropriated funds for IMET, FMF, excess defense article and Section 1206 assistance in Burma, except as otherwise permitted under Section 404 of the Child Soldiers Prevention Act of 2008 (P.L. 110-457).

The 113<sup>th</sup> Congress could decide to continue exert its appropriations authority in two distinct ways. First, it may refuse to fund or bar the usage of funds for certain types of assistance in Burma that Congress considers inappropriate at this time. Second, Congress could effectively set assistance priorities by its allocation of funds to differing projects to be conducted in Burma.

## General Policy Oversight

The various presidential waivers have significantly altered the scope of sanctions that remain in force in Burma. The general pattern has been to lift the enforcement of global restrictions on political and economic relations, but to keep in effect sanctions on designated individuals or entities deemed to be counter-productive to U.S. policy goals in Burma. This selective process of sanction waivers has in some cases made the enforcement of the sanction laws more complex. For certain sanctions—particularly the visa ban, the freezing of assets, and restrictions on the provision of financial services—questions have been raised on whether the Department of State and the Department of the Treasury have acted in full compliance with the law and have taken sufficient steps to fully implement the sanctions laws.

As described above, three laws and two presidential documents contain provisions specifying which Burmese nationals are to be denied a visa to enter the United States, as well as possible conditions for a waiver. Over the last two years, a number of Burmese government officials have been issued visas to visit the United States, but it is unclear if in each case the required waiver process was adequately followed, including the requirement that Congress be notified in writing that a waiver is to be provided.

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<sup>56</sup> USAID closed its office in the U.S. embassy in Rangoon, Burma in 1988, following the violent suppression of a popular uprising against the nation's ruling military junta (known as the "8888 Rebellion"). On April 5, 2012, USAID notified Congress that it intended to reopen an office in the U.S. embassy in Rangoon in FY2012, and that the new office would resume the administration of U.S. assistance programs to Burma (U.S. Agency for International Development, Congressional Notification, CN #38, April 5, 2012).

A similar issue of compliance arises with respect to the requirement that the assets of certain Burmese persons be frozen and the restriction of financial services to certain Burmese entities. The BFDA and the Tom Lantos Block Burmese JADE Act specify two similar but distinct categories of persons subject to the freezing of assets. The Tom Lantos Block Burmese JADE Act designates a number of different people who cannot be provided financial services by U.S. financial institutions. In practice, the Specially Designated Nationals (SDN) list maintained by OFAC has served as the mechanism for enforcing the provisions of these two laws. Several organizations have indicated to the State Department and OFAC that there are dozens of Burmese nationals that appear to meet the criteria set in the two laws that are not included on the SDN list. Secretary Clinton and other U.S. officials have stated that a more detailed review of the existing SDN list with respect to the Burmese sanctions should be conducted. Since the start of 2012, 15 names have been added to the SDN list for Burma and two names (President Thein Sein and Speaker of Burma's Parliament's lower house Shwe Mann) have been removed from the list.

As previously stated, the 112<sup>th</sup> Congress held hearings that examined the general conduct of U.S. policy in Burma. Given the questions that have arisen over the implementation of existing sanctions that remain in effect, the 113<sup>th</sup> Congress may consider holding hearings to examine the effectiveness of current enforcement of U.S. sanctions on Burma.

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